

Adopted	Rejected
---------	----------

COMMITTEE REPORT

YES:	12
NO:	0

MR. SPEAKER:

*Your Committee on Technology, Research and Development, to which was referred Senate Bill 74, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 2, line 24, delete "rightmost" and insert "**right most**".
- 2 Page 3, between lines 3 and 4, begin a new paragraph and insert:
- 3 "**Sec. 8. A person may not do any of the following:**
- 4 (1) **Send unsolicited commercial electronic mail and fail to use**
- 5 **"ADV:" as the initial four (4) characters in the subject line of**
- 6 **the electronic mail. This subdivision does not apply if any of**
- 7 **the following apply:**
- 8 (A) **The sender of the electronic mail has a current**
- 9 **business relationship with the recipient of the electronic**
- 10 **mail.**
- 11 (B) **The sender of the electronic mail is an organization**
- 12 **using the electronic mail to communicate with its**
- 13 **members.**
- 14 (C) **The sender of the electronic mail is an organization**

1 using the electronic mail to communicate exclusively with
 2 the organization's employees or contractors, or both.

3 (2) Send unsolicited commercial electronic mail and fail to use
 4 "ADV:ADLT" as the first eight (8) characters in the subject
 5 line of the electronic mail. This subdivision applies only to
 6 unsolicited commercial electronic mail containing a
 7 solicitation for:

8 (A) the sale or lease of services or tangible or intangible
 9 personal or real property; or

10 (B) an extension of credit;
 11 that may be viewed, purchased, leased, or possessed only by
 12 an individual who is at least eighteen (18) years of age.

13 (3) Send unsolicited commercial electronic mail and fail to
 14 provide a means for the recipient easily and at no cost to the
 15 recipient to remove the recipient's name from the sender's
 16 electronic mail address lists.

17 (4) Send unsolicited commercial electronic mail to a recipient
 18 who has asked the sender to remove the recipient's electronic
 19 mail address from the sender's electronic mail address lists.

20 (5) Provide to a third person the electronic mail address of a
 21 recipient who has asked the sender to remove the recipient's
 22 electronic mail address from the sender's electronic mail
 23 address lists. This subdivision applies to a third person who is
 24 a part of the sender's business organization. This subdivision
 25 does not prohibit providing a recipient's electronic mail
 26 address to a third person for the sole purpose of inclusion of
 27 the electronic mail address on a do-not-mail list."

28 Page 3, line 4, delete "8" and insert "9".

29 Page 3, delete lines 12 through 30, begin a new paragraph and
 30 insert:

31 "Sec. 10. (a) The following have a right of action against a
 32 person who initiates or assists the transmission of a commercial
 33 electronic mail message that violates this chapter:

34 (1) A person who receives the commercial electronic mail
 35 message.

36 (2) An interactive computer service that handles or
 37 retransmits the commercial electronic mail message.

38 (b) This chapter does not provide a right of action against:

1 (1) an interactive computer service;

2 (2) a telephone company; or

3 (3) a CMRS provider (as defined by IC 36-8-16.5-6);

4 whose equipment is used to transport, handle, or retransmit a
5 commercial electronic mail message that violates this chapter.

6 (c) It is a defense to an action under this section if the defendant
7 shows by a preponderance of the evidence that the violation of this
8 chapter resulted from a good faith error and occurred
9 notwithstanding the maintenance of procedures reasonably
10 adopted to avoid violations of this chapter.

11 (d) If the plaintiff prevails in an action filed under this section,
12 the plaintiff is entitled to the following:

13 (1) An injunction to enjoin future violations of this chapter.

14 (2) Compensatory damages equal to any actual damage
15 proven by the plaintiff to have resulted from the initiation of
16 the commercial electronic mail message. If the plaintiff does
17 not prove actual damage, the plaintiff is entitled to
18 presumptive damages of five hundred dollars (\$500) for each
19 commercial electronic mail message that violates this chapter
20 and that is sent by the defendant:

21 (A) to the plaintiff; or

22 (B) through the plaintiff's interactive computer service.

23 (3) The plaintiff's reasonable attorney's fees and other
24 litigation costs reasonably incurred in connection with the
25 action.

26 (e) A person outside Indiana who:

27 (1) initiates or assists the transmission of a commercial
28 electronic mail message that violates this chapter; and

29 (2) knows or should know that the commercial electronic mail
30 message will be received in Indiana;

31 submits to the jurisdiction of Indiana courts for purposes of this
32 chapter."

33 Page 3, line 33, delete "IC 24-5-22-8" and insert "**IC 24-5-22-9**".

(Reference is to

and when so amended that said bill do pass.

Representative Hasler